IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.718 of 2000

Date of decision : October 9, 2007

State of H.P. **…Appellant.**

Versus

Biresh Kumar **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting? No.

For the appellant : Mr. D.S. Nainta, Dy. Advocate General.

For the respondent : Mr. Bhupender Gupta, Senior Advocate with Ms. Charu Gupta, Advocate.

Surjit Singh, Judge(Oral)

This appeal is directed by the State against the judgment of trial Magistrate, whereby the respondent, who was sent up for trial for an offence punishable under Section 16(1) (a) (i) and (ii) of the Prevention of Food Adulteration Act, 1954, has been acquitted.

2. A complaint was made against the respondent by Shri G.R. Puri, Food Inspector alleging that on 19.12.1995 at 8.45 A.M. he found the respondent selling milk, which he was carrying in drums, in Bilaspur Town, and that on being asked, he could not produce any licence for sale of milk. Further, it was alleged that a sample was taken from one of the drums, which contained about 30 litres of milk and that on analysis, the milk was found to be adulterated, inasmuch as it did not conform to the prescribed standard.

3. Trial Court has acquitted the respondent holding that there was no evidence that the respondent indulged in the trade of selling

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Whether reporters of the local papers may be allowed to see the judgment?

milk and, therefore, acquitted him of the charge of selling milk without licence. It also acquitted the respondent of the charge of selling adulterated milk to the Food Inspector holding that there was no evidence that the milk had been made homogenous before the sample was taken. Trial Court has observed that the Food Inspector and the witness accompanying him even though testified that the milk had been stirred by means of a measure carried by the respondent, yet the process of stirring with the measure could not be said to have made the milk homogenous, because there was huge quantity of the milk in the drum, i.e., 30 litres and by stirring with the said measure, it was not possible to make it homogenous. Trial Court has placed reliance upon a judgment of this Court in ***State of H.P***. *Vs*. ***Sher Khan***, ***1998, Cri. L.J. 563***, wherein this Court held that milk in a drum cannot be made homogenous by stirring with a 12 inches or 15 inches long ladle.

4. Since the view taken by the Magistrate is supported by the judgment of this Court and no judgment to the contrary rendered either by this court or the Hon'ble Supreme Court, has been cited, it cannot be said that the view taken by the trial Court is illegal or perverse. Hence, the appeal is dismissed.

October 9, 2007(ss) **(Surjit Singh), J**